In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.20323 of 2006

Date of Decision: 21.12.2006

Executive Engineer, Provincial Division No.1, PWD, B&R, Ambala Cantt. and Another.

…Petitioners.

Versus

Presiding Officer, Labour Court, Ambala and Another.

…Respondents.

CORAM: HON'BLE MR.JUSTICE S.S.Nijjar
HON'BLE MR.JUSTICE S.S.Saron

Present: Mr.Anil Rathee, Additional Advocate General Haryana, for the petitioners.

The petitioners seek the quashing of the award dated 4.8.2006 (Annexure P5) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala (respondent No.1) whereby Smt.Rajwant Kaur (respondent No.2) has been reinstated in service with continuity of service and full back wages.

Smt.Rajwant Kaur (respondent No.2) was engaged as Beldar on daily wage basis on 24.12.1997 under the petitioners. However, the work of Typist/Clerk was also being got done from her. She though had been working continuously under the petitioners on daily wage basis, however, with effect from 21.9.2000, she was allowed to work on a sanctioned post for 89 days. This, according to respondent No.2, was an unfair labour practice. In any

case, after expiry of period of 89 days, the petitioners, on 21.12.2000, terminated her services without giving one month notice or salary in lieu thereof. No retrenchment compensation was paid. The said action, according to respondent No.2, was in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947 ("Act" for short) as well against the principles of natural justice. Respondent No.2 in fact had completed 240 days of service during the last 12 preceding calendar months before the date of her termination from service. The work against which she had been working was still in existence. Respondent No.2 raised an industrial dispute in this regard. The State Government, in exercise of its powers under Section 10(1)(c) of the Act, referred the said dispute to the Labour Court (respondent No.1). The reference was to be effect whether the termination of services of Smt.Rajwant Kaur (respondent No.2) was justified and in order and if not to what relief was she entitled. The Labour Court (respondent No.2) after considering the facts and material on record accepted the claim of respondent No.2. Accordingly, the petitioners were directed to reinstate respondent No.2 in service with continuity of service and full back wages. The said award of the Labour Court, as already noticed, is assailed in this petition.

Mr.Anil Rathee, learned Additional Advocate General, Haryana, appearing for the petitioners submits that the Labour Court has grossly erred in reinstating respondent No.2 in service with continuity of service inasmuch as she was engaged on 24.12.1997 as Beldar on daily wage basis and cannot be given the benefits of continuity of service which would ultimately also entitle her to claim regularization in service. In fact, the claim of respondent No.2 seeking regularization is not covered by the instructions of the State Government for regularization of service.

We have given our thoughtful consideration to the contentions of the learned counsel for the petitioners. However, we find no merit in the

same. The respondent No.2 was appointed by the petitioners on daily wage basis as Beldar and she worked continuously for the period from 24.12.1997 to 21.12.2000 with intermittent breaks. She had worked for 307 days in the calendar year of 1998, for 264-1/2 working days in the calendar year of 1999 and 230 days during the last preceding calendar months for the period from 9.10.1999 to 21.12.2000 before her services were terminated on 21.12.2000 by the petitioners. The petitioners' witness Sh.G.R.Kalra, Sub Divisional Engineer, MW.1, appeared before the Labour Court and stated that respondent No.2 had not worked for 240 days and had in fact worked for 231 days for the period from January 2000 to December 2000 i.e. the preceding 12 calendar months from the date of her termination. However, during cross-examination, he conceded that although respondent No.2 had been engaged as Beldar but she was working as Typist in their office and that they had been giving wages/salary to her as per the minimum wages fixed by the Government. The petitioners had not counted Sundays and Gazetted holidays as working days in respect of respondent No.2 in the detail that had been submitted by them as Ex.M1 before the Labour Court. Sundays and Gazetted holidays are to be counted as working days for the purpose of computing 240 days so as to be in 'continuous service' in terms of Section 25-B of the Act as held by Hon'ble the Supreme Court in **Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation AIR 1986 Supreme Court 458** and also by this Court in **Miss Maya Sethi v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak & Others 1996(5) S.L.R. (P&H) 817**. Therefore, if the Sundays and Gazetted holidays are taken into account the respondent No.2 had been in service for more than 240 days during the period of 12 calendar months preceding the date of her termination from service. In the

circumstances, there has been an infraction of the provisions of Section 25F of the Act, the requirements of which admittedly have not complied with as the petitioners' stand has been that respondent No.2 has not completed 240 days preceding her termination from service. As such, respondent No.2 has rightly been held entitled to be reinstated in service with continuity of service and full back wages.

The question whether the respondent No.2 would be entitled for regularization of her services is to be considered by the petitioners in accordance with the instructions of the State Government and this court at this stage is not to go into the said aspect as it is for the petitioners to consider her case for regularization of her services in accordance with law. The question that is involved in the present case is whether there has been an infraction of the provisions of Section 25F of the Act. The same having been found to be there, the respondent No.2 is entitled to all benefits in consequence of its violation. The award passed by the Labour Court (respondent No.1) in the facts and circumstances of the case is just and appropriate and calls for no interference in exercise of the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India.

For the foregoing reasons, there is no merit in this petition. The same is accordingly dismissed.

(S.S.NIJJAR)
Judge

December 21, 2006 **(S.S.SARON)**
dkb **Judge**